

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12885 of 2016

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Anjani Kumar Son of Late Shiva Kumar Prasad resident of Village and Post-Arai
Banipur, P.S.- Daniyama, District-Patna Petitioner

Versus

1. The State of Bihar
 2. Principal Secretary, Planning and Development Department and Stastical
Department, Old Secretariat, Patna 800001
 3. Director, Planning and Development Department and Statical Department, Old
Secretariat, Patna 800001
 4. The District Magistrate, Nalanda Collectariate, Bihar Sharif, Nalanda
- Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Chandra Bhushan Singh, Adv.
For the Respondent/s : Mr. Birju Prasad, GP-13
: Mr. Amaresh, AC to GP-13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-02-2017

Heard Mr. Chandra Bhushan Singh, learned counsel for the

petitioner and Mr. Amaresh, AC to GP-13, for the State.

The petitioner is aggrieved by the order of suspension
bearing Memo No. 1282 dated 6.7.2016 of the Director, Planning and
Development Department, Govt. of Bihar, impugned at Annexure 1 to
the writ petition.

Mr. Singh, learned counsel for the petitioner, though has
raised several grounds to question the order of suspension, but, in my
opinion, the writ petition is bound to succeed, inter alia, on grounds
that the suspension order is in teeth of the statutory stipulation present
under Rule 9(7) of the Bihar Government Servants (Classification,
Control and Appeal) Rules, 2005 (hereinafter referred to as 'the
Rules').



Some undisputed fact of the matter is that the petitioner was allegedly caught in intoxicated state leading to institution of a police case in Nalanda P.S.Case No. 58/2016 registered for the offences punishable under sections 53A, 53C and 64 of the Bihar Excise Act, 2016. The petitioner was placed under suspension from the date he was taken into custody i.e. 9.4.2016. The petitioner was released on bail on 12.4.2016 and whereafter the order of suspension was considered by the Director and revoked by the order impugned herein at Annexure 1 but by the same order, the order of suspension has been renewed and extended.

Learned counsel while questioning the order on merits submits that the allegation that the petitioner was in intoxicated state is not correct. This Court would not go into the merits of the charge because the matter is yet pending before the court below.

Reverting to the order of suspension, learned counsel for the petitioner is correct to submit that the order of suspension has been passed in violation of the statutory stipulations underlying Rule 9(7) of 'the Rules', inasmuch as even if the Director, Planning and Development Department, being conscious of the stipulations present in Rule 9(7) of 'the Rules' has proceeded to revoke the earlier suspension order by the memo impugned herein but by the same order he has again placed the petitioner under suspension which exercise is contrary to the statutory stipulations. Rule 9(7) of 'the Rules' reads



thus:

"9(7) Charge sheet must be framed within three months from the date of issue of suspension order failing which on expiry of three months, the suspension order shall be revoked unless the authority, which issued the suspension order, passes the order renewing the suspension alongwith reasons to be recorded in writing for the delay in framing of charge sheet for a further period of four months:

Provided that after the expiry of extended period of four months the suspension order shall stand revoked if the charge sheet is not framed."

A plain reading of 'the Rules' would manifest that the obligation is cast on the authority concerned to give reasons for non-submission of a charge memo within the stipulated period of three months and only thereafter he is vested with the jurisdiction to continue the suspension. This mandatory obligation has not been discharged by the Director and there is no reason assigned in the order impugned herein as to the delay in submission of the charge sheet.

The order of suspension is also not sustainable because it even fails on the extended stipulation present in the proviso attached to the Rule. Rule 9(7) of 'the Rules' very clearly stipulates that even in such of the cases where the order of suspension has to be extended due to non-submission of the charge memo within the stipulated period of three months, the suspension cannot sustain beyond the extended period of four months. Meaning thereby the disciplinary authority has been given seven months to discharge the onus of



submission of charge memo and if the charge memo is not submitted even in the extended period, the suspension order has to be revoked.

The Full Bench judgment of this Court in the case of the **State of Bihar & ors. v. Gyan Kumar Ram & ors.**, reported in 2009(4) PLJR 272, while explaining the legal position, does provide a rider in such situation and obliges the delinquent to move the appropriate authority or the court for questioning the suspension, but in the present case, the petitioner has questioned the suspension order through this writ petition which was filed on 6.8.2016. Meaning thereby the challenge was to the knowledge of the respondents and despite the statutory obligation present, they sat in idleness. The charge memo in the disciplinary proceeding has been placed on record by the respondents and is Annexures 'E series' to the counter affidavit bearing Memo No. 2495 dated 14.12.2016 which is beyond the four months extended stipulation present under Rule 9(7) of 'the Rules'.

For the reasons discussed, the order of suspension bearing Memo No. 1282 dated 6.7.2016 impugned at Annexure 1 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed with all consequential benefits.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2017
Transmission Date	NA

